PUBLIC MATTER FILED JUNE 6, 2012

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **RICHARD ALLEN LENARD,** **Member No. 153916,** A Member of the State Bar.	)	Case Nos.: **09-O-11175-RAP** (09-O-13870; 09-O-14231; 09-O-16534; 09-O-16777; 09-O-18627; 10-O-00425; 10-O-09953); **10-O-02737-RAP** (10-O-05950; 10-O-07962; 10-O-10524; 10-O-11144) **(Consolidated.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd. (c)(4).)**

Introduction[1]

In this contested, original disciplinary proceeding, Richard Allen Lenard ("Respondent") is charged with the following thirteen counts of misconduct: twelve counts of engaging in the unauthorized practice of law in another jurisdiction (Cal. rule 1-300(B)) and one count of improperly depositing his personal funds into his client trust account (Cal. rule 4-100(A) [commingling]). For the reasons set forth *post*, the court finds Respondent culpable only on the twelve counts of engaging in the unauthorized practice of law in another jurisdiction. After considering the facts and the law, the court recommends that Respondent be disbarred from the practice of law in this state. Furthermore, in light of its disbarment recommendation, the court

[1] Unless otherwise indicated, all references to California rules are to the State Bar of California Rules of Professional Conduct. Furthermore, all statutory references are to the California Business and Professions Code unless otherwise indicated.

orders *post* that Respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding or further court order. (§ 6007, subd. (c)(4); Rules Proc. of State Bar, rule 5.111(D).)

The State Bar of California ("State Bar") is represented by Deputy Trial Counsel Hugh Radigan. Respondent is represented by Attorney James R. DiFrank.

Significant Procedural History

On November 10, 2011, the State Bar filed the notice of disciplinary charges ("NDC") in case number 09-O-11175-RAP, which includes correlated case numbers 09-O-13870, 09-O-14231, 09-O-16534, 09-O-16777, 09-O-18627, 10-O-00425, and 10-O-09953 ("NDC #1"). And Respondent filed his response to NDC #1 on December 5, 2011.

Then, on November 28, 2011, the State Bar filed the NDC in case number 10-O-02737-RAP, which includes correlated case numbers 10-O-05950, 10-O-07962, 10-O-10524, and 10-O-11144 ("NDC #2). And Respondent filed his response to NDC #2 on December 8, 2011.

The court consolidated case numbers 09-O-11175-RAP and 10-O-02737-RAP for all purposes in December 2011. (See order filed December 9, 2011.)

The trial in this matter was held on March 19 and 20, 2012. On the first day of trial, the parties filed a stipulation as to facts and admission of documents. And, at the close of trial on March 20, 2012, the court took the consolidated matter under submission for decision.

Findings of Fact and Conclusions of Law

Jurisdiction

Respondent was admitted to the practice of law in California on August 28, 1991, and has been a member of the State Bar of California since that date. As set forth in more detail *post*, Respondent has three prior records of discipline.

Case Numbers: 09-O-11175; 09-O-13870; 09-O-14231; 09-O-16534; 09-O-16777; 09-O-18627; 10-O-00425; 10-O-02737; 10-O-05950; 10-O-07962; 10-O-10524; 10-O-11144

In each of the 12 above-listed case numbers, Respondent is charged with willfully engaging in the unauthorized practice of law ("UPL) in another jurisdiction in a single client matter (for a total of 12 separate client matters). In each of the 12 client matters, the client or clients sought to reduce their unsecured debts, almost exclusively credit-card debt. All of the clients first sought assistance by contacting one of the following three debt-relief companies: Freedom Financial Management, Beacon Debt Service, or Pathway Financial Management. Those three companies then referred the clients to Respondent. The companies are all located in the State of California, but advertise their debt-relief services in television and radio ads in California and in a number of California's sister states.

None of the clients in the 12 client matters that are the subject of this disciplinary proceeding resides in California. Instead, the clients reside in either Florida, Georgia, New York, Nevada, Oklahoma, Pennsylvania, South Dakota, or Wisconsin. Respondent has never been admitted to the practice of law in any of those states. In fact, Respondent is licensed to practice law only in the State of California. Further, Respondent never appeared in any court proceeding with or for any of these clients. Nor did Respondent have a pre-existing relationship with any of the clients. Nor did Respondent ever meet or speak with any of the clients during the time he and his law office represented them.

When the clients contacted the debt-relief companies, the debt-relief companies sent the clients contracts that authorized the debt-relief companies to negotiate with the clients' creditors to reduce the clients' debts. At the same time that the debt-relief companies sent the clients the companies' contracts, the debt-relief companies often sent the clients Respondent's standard Attorney-Client Legal Services Agreement ("form retainer agreement" or "Respondent's retainer

agreement"); otherwise, Respondent sent his form retainer agreement to the clients directly. Each of the clients in the 12 client matters in this disciplinary proceeding executed Respondent's form retainer agreement. In other words, except for the clients' names, Respondent's retainer agreements in the 12 client matters are virtually identical.

None of the clients in the 12 client matters had any significant contacts with the State of California or any court proceedings in California. Nonetheless, section 8(b) of Respondent's form retainer agreement provides as follows:[2] "Client and [Respondent's] Law Firm agree that this Agreement shall be governed by and interpreted under the laws of the State of California. Venue for all disputes between Client and Law Firm shall lie in the Superior Court of the State of California for the County of Orange."

Section 2 of Respondent's form retainer agreement describes the scope of Respondent's legal representation as follows:

> a. Client is hiring [Respondent's] Law Firm for the purpose of negotiating the settlement of certain unsecured debts that Client chooses to include within the scope of Law Firm's representation. Law Firm will contact the unsecured creditors included in this representation, in writing and/or by telephone as Law Firm deems appropriate, to advise them that Law Firm is representing Client and that all communications related to the debt(s) in question should be directed to Law Firm. . . .
>
> b. Client acknowledges that the attorneys that comprise Law Firm are not licensed to practice in all states. Therefore, any legal services rendered by Law Firm in states where its attorneys are not licensed may involve the association of attorneys licensed in those states.
>
> c. Law Firm will use its best efforts to obtain the greatest reduction possible of each creditor's claim. Law Firm reserves the right to remove any of Client's accounts from this representation.
>
> d. Law Firm will use its best efforts to respond to and prevent creditors from unlawfully contacting or harassing Client. Client acknowledges that Law Firm cannot guarantee that certain creditors will

[2] In Respondent's retainer agreement, the term "Law Firm" refers to the "Law Office of Richard A. Lenard."

> stop collection efforts or harassment of Client, however, in that event, Law Firm will recommend a course of action to Client, including but not limited to, assisting Client in locating an attorney licensed to practice law in the appropriate state to address creditor's actions.

The only references to Respondent's fees in Respondent's form retainer agreement are in section 6 of the agreement, which provides the following:

> **Legal Fees.** Client acknowledges that Law Firm is not billing for its Service on an hourly basis. Given the nature of this fee arrangement, Law Firm is not required to detail or keep a record of how much time is spent on Client's matter.

Other than reciting that Respondent's law office is not billing on an hourly basis, Respondent's form retainer agreement does not describe how Respondent is billing for his or his law office's legal services (e.g., a flat fee or statutory fee). (§ 6148, subd. (a)(1).) Nor does Respondent's form retainer agreement state the dollar amount of Respondent's fee. Nor does the agreement state who was to pay Respondent's fee.

Furthermore, Respondent's form retainer agreement recites Respondent and his law office's obligations to the client and the client's obligations to Respondent and his law office. And, in section 5 of Respondent's retainer agreement, which is titled: "The Debt Reduction Process," is a summary of how Respondent and his law office would deal with the client's creditors to reduce the client's debts.

Notwithstanding the unequivocal representation in Respondent's form retainer agreement that Respondent's law office would "use its best efforts to obtain the greatest reduction possible of each creditor's claim" and notwithstanding the summary of how Respondent's law office would deal with the client's creditors to reduce the client's debts in Respondent's retainer agreement, the record in this disciplinary proceeding clearly establishes that it was the debt-relief companies, and not Respondent or Respondent's law office, that dealt and negotiated with the

clients' creditors in an attempt to reduce the clients' debts. The record also clearly establishes that the debt-relief companies dealt and negotiated with the clients' creditors independently of Respondent and his law office (i.e., without Respondent's or his law office's participation or supervision). In short, Respondent's use of his form retainer agreement in each of the 12 client matters in this disciplinary proceeding was clearly deceptive and misleading.[3]

In each of the 12 client matters, the debt-relief companies initially gathered and reviewed the information concerning the clients' debts and later forwarded that information to Respondent. Respondent testified that the only actions he took in the 12 client matters were (1) to review the client file to determine whether the client might be eligible to file for bankruptcy under chapter 7 of the United States Bankruptcy Code. ("bankruptcy review") and (2) to send cease-and-desist letters written on Respondent's law-office stationary to each of the client's creditors.[4]

In each of the 12 client matters, it took Respondent about 15 to 20 minutes to perform the bankruptcy review, for which the referring debt-relief company paid Respondent between $75 to $100.[5]

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[3] Even though the State Bar did not charge Respondent with using deceptive and misleading retainer agreements in the 12 client matters involved in this disciplinary proceeding, this court may and does consider Respondent's use of such deceptive and misleading agreements to be bad-faith-dishonesty aggravation under Rules of Procedure of the State Bar of California, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)(iii) (all further references to standards are to this source). (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

[4] Notwithstanding Respondent's testimony, the record establishes that, in some of the 12 client matters, Respondent's law office also sent the client, inter alia, a letter regarding "Payment Procedures & Policy for the DEBT REDUCTION PROGRAM" on Respondent's law office's stationary.

[5] Even though the State Bar did not charge Respondent with willfully violating California rule 3-310(F)(3) by accepting compensation for his representation from the debt-relief companies without first obtaining each of his client's informed written consent, this court may and does consider those rule violations as other-ethical-violations aggravation under standard 1.2(b)(iii). (*Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.)

Respondent's cease-and-desist letters to each client's creditors advised the creditors that the client had retained Respondent's law office; demanded, citing the Fair Debt Collection Practices Act, section 801, et seq., that the creditors not contact the client; and instructed the creditors that any communications with the client was to be conducted through Respondent's law office. Respondent did not maintain billing records in any of the 12 client matters, but he did keep short notes on each file he reviewed.

Other than perhaps some incidental phone calls, letters (see footnote 4, *ante*), or other small tasks, neither Respondent nor his law office performed additional services in any of the 12 client matters in this proceeding other than the bankruptcy review and the sending of cease-and-desist letters to the creditors. Yet, nothing in Respondent's retainer agreement, which Respondent drafted, notified the clients that Respondent and his law firm would perform only two services (i.e., a bankruptcy review and the sending of cease-and-desist letters). Again, Respondent's form retainer agreement affirmatively states that the scope of his services includes that negotiating the settlement of specific unsecured debts identified by the client. Without question, determining a client's eligibility for bankruptcy under chapter 7 and the sending of cease-and-desist letters to creditors fall within the stated scope of Respondent's employment. But it is equally clear that Respondent's stated and agreed upon scope of employment was not limited to those two services. Even though each of Respondent's clients also authorized the referring debt-relief company to negotiate with his or her creditors to reduce their debts, Respondent cannot avoid or transfer his and his law office's obligation and responsibility to use their best effort "to obtain the greatest reduction possible of each creditor's claim" for his clients by placing the onus to do so on the debt-relief companies.

The court rejects Respondent's contention that, because a person does not have to be a licensed attorney in any state to negotiate a reduction of another's debts, his and his law office's

performance of the obligations set forth in Respondent's form retainer agreement to negotiate a reduction of the client's debts is not the practice of law. Indeed, non-litigation legal services include not only services that are clearly legal services (e.g., drafting a contract), but also include services that a non-lawyer may lawfully perform for another, but that are considered the practice of law when performed by a lawyer.

Furthermore, to provide competent legal representation for a consumer client seeking debt-relief assistance from an attorney, the attorney must be familiar with not only numerous federal laws, but also with numerous state laws regarding creditor's rights and consumer debtors' rights. There are few, if any, uniform state laws dealing with creditor's rights and consumer debtors' rights. In short, there are great differences in such laws and their construction and application among the 50 states. That is one of the important reasons each state regulates and restricts the rights of attorneys who are licensed only by a sister state to practice law within its borders.

Respondent readily admits that he was and is familiar with only California laws regarding creditors' and consumer debtors' rights. Thus, the record clearly establishes not only that Respondent failed to provide competent legal representation to his out-of-state clients in the 12 client matters involved in this disciplinary proceeding, but also that Respondent was incapable of providing competent representation in each of those matters because of his lack of knowledge of the laws regarding creditors' and consumer debtors' rights and their construction and application in Florida, Georgia, New York, Nevada, Oklahoma, Pennsylvania, South Dakota, and Wisconsin. Because Respondent knew, at the time he agreed to represent the clients in the 12 client matters, that he had no real knowledge of the relevant laws and their construction and application in Florida, Georgia, New York, Nevada, Oklahoma, Pennsylvania, South Dakota, or Wisconsin and because respondent did not thereafter promptly acquire such knowledge, it is

clear that he deliberately failed to perform legal services with competence in willful violation of rule 3-110(A) in each of the 12 client matters. However, because the State Bar failed to charge Respondent with those violations, the court considers them only as other-ethical-violations aggravation under standard 1.2(b)(iii). (*Edwards v. State Bar, supra,* 52 Cal.3d at pp. 35-36.)

Under the terms of Respondent's retainer agreement, Respondent was required to, among other things, negotiate the settlement of a client's unsecured debts. Any reference in the agreement to helping a client obtain local counsel is of no matter since that would occur only if Respondent could not stop the creditors from contacting and harassing the client or litigation ensued.

1. Case Number 09-O-11175 – The Powell Client Matter

On July 16, 2008, Oklahoma residents Tommy and Kathryn Powell ("the Powells") signed Respondent's form retainer agreement, retaining Respondent to negotiate with their unsecured creditors to perform "debt consolidation" legal services in connection with their unsecured consumer debts. On July 31, 2008, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to four unsecured creditors of the Powells.

As noted *ante*, Respondent has never been licensed to practice law in the State of Oklahoma. The State of Oklahoma prohibits the practice of law by anyone who is not admitted to the practice of law in Oklahoma except as otherwise provided by law or as authorized in Oklahoma Rules of Professional Conduct, rule 5.5 ("Oklahoma rule 5.5"). Oklahoma rule 5.5 provides as follows:[6]

> (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

[6] Oklahoma rule 5.5 is identical to ABA Model Rule 5.5, which deals with the unauthorized practice of law ("UPL") and the multijurisdictional practice of law.

(b) A lawyer who is not admitted to practice in this jurisdiction [(i.e., Oklahoma)] shall not:

(1) except as authorized by these Rules or other law, *establish an office or other systematic and continuous presence in this jurisdiction for the practice of law*; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) Subject to the provisions of 5.5(a), a lawyer admitted in a United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in a jurisdiction where not admitted to practice that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) *are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.*

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates in connection with the employer's matters, provided the employer does not render legal services to third persons and are not services for which the forum requires pro hac vice admission; or

(2) *are services that the lawyer is authorized to provide by federal law* or other law of this jurisdiction.

(Italics added.)

In addition, paragraphs 4, 5, 6, 13, and 14 of the official Comment to Oklahoma rule 5.5 provide as follows:

* * *

> [4] … Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction [(i.e., Oklahoma)] violates paragraph (b) [of Oklahoma rule 5.5] if the lawyer *establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here.* …
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> [5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in a jurisdiction where not admitted under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. *Paragraph (c) identifies four such circumstances. The fact that conduct is not identified does not imply that the conduct is or is not authorized.* …
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> [6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in a jurisdiction where not admitted and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in a jurisdiction where not admitted on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation. …
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> * * *
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> [13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in a jurisdiction where not admitted that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). *These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.*
>
> [14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. *A variety of factors evidence such a relationship.* The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business

> sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

(Italics added.)

Respondent Practiced Law in Oklahoma

As quoted above in paragraph 4 of the official Comment to Oklahoma Rule 5.5, regulates and restricts the rights of an out-of-state attorney to practice law in Oklahoma when and "if the lawyer establishes an office *or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here.* …" (Italics added.) The record clearly establishes that, even though Respondent never met with the Powells in Oklahoma and never appeared in any court proceeding for the Powells in Oklahoma, that respondent established a systematic and continuous presence in Oklahoma for the practice of law during his representation of the Powells. Respondent and his law office established such a presence in Oklahoma by communicating with and giving legal advice to the Powells while the Powells were physically in Oklahoma. To conclude otherwise would be to effectively hold that Oklahoma permits an out-of-state attorney to engage in the practice of law in Oklahoma so long as the out-of-state attorney does so in only one client matter.

Safe-harbor Provisions in Oklahoma Rule 5.5(c)

In Oklahoma rule 5.5(c), Oklahoma expressly authorizes out-of-state attorneys to *temporarily* practice law within its borders in four instances. Respondent contends that he was authorized to provide debt relief legal services to the Powells under one of those four safe-harbor provisions. Specifically, respondent contends that his representation of the Powells was permissible under Oklahoma rule 5.5(c)(4), which permits a lawyer

admitted in a United States jurisdiction other than Oklahoma and not suspended or disbarred in any jurisdiction to provide legal services in Oklahoma on a temporary basis so long as the services "are not within paragraphs (c)(2) or (c)(3) [of Oklahoma rule 5.5 and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice."

Respondent opines that because he and the three debt-relief companies that his clients originally contacted are all located in California and that because the Powells' creditors are located in different states all across the United States, that the legal services Respondent provided to the Powells arose out of or were reasonably related to Respondent's practice of law in California. The court cannot agree.

Respondent's representation of the Powells in Oklahoma, a jurisdiction where Respondent is not licensed, do not arise out of and are not reasonably related to Respondent's practice of law in California, the only jurisdiction in which Respondent is licensed to practice law. As noted in paragraph 14 of the official Comment to Oklahoma rule 5.5, quoted *ante*, a number of factors must be considered to determine whether Respondent's representation of the Powells arose out of or was reasonably related to Respondent's practice of law in California. None of those factors support a finding that Respondent's representation of the Powells arose out of or was reasonably related to Respondent's California law practice.

First, Respondent had not previously represented the Powells. Second, the Powells are not residents of California and do not have any substantial contacts with California. Third, the Powells' debts do not have a significant connection with California. Fourth, no significant aspect of the Powells' consumer debts involved California law. Fifth, none of the activities or legal issues surrounding the Powells'

consumer debts involved multiple state jurisdictions. Moreover, even if the activities or legal issues surrounding the Powells debts did involve multiple state jurisdictions, Respondent admittedly has no knowledge of the multiple state's laws. Respondent admits that he is knowledgeable only with respect to California laws. Finally, Respondent does not have a recognized expertise in a particular body of federal, nationally-uniform law on consumer-debt-relief matters that was applicable to the Powells' consumer-debt-relief matter.

Respondent's argument that many of his client's creditors are from multiple jurisdictions has little merit. The most relevant issue is in what jurisdiction do Respondent's clients reside, not the jurisdiction of the clients' creditors. At a minimum, Oklahoma's laws regarding consumer debtors' rights as construed and applied by Oklahoma courts would be highly relevant to the Powells' consumer debt relief matter. Again, Respondent admits not having any knowledge of Oklahoma law.

In sum, Respondent's acceptance of employment with and representation of the Powells was not authorized by Oklahoma rule 5.5(c)(4).

Oklahoma Rule 5.5 in General

Paragraph 5 of the official Comment to Oklahoma Rule 5.5, which is set forth *ante*, makes clear that, even if Respondent's practice of law in Oklahoma does not fall within one of the four safe-harbor provisions in Oklahoma rule 5.5(c), Respondent's practice of law in Oklahoma would still be permissible so long as the legal services he performed in Oklahoma were performed on a temporary basis and "under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts." (Comment to Oklahoma rule 5.5, ¶ 5, *ante*.)

Moreover, as paragraph 6 of the official Comment to Oklahoma Rule 5.5 makes clear: "There is no single test to determine whether a lawyer's services are provided on a 'temporary basis' in a jurisdiction where not admitted and may therefore be permissible under [rule 5.5(c)]." The court need not, and does not, address the issue of whether Respondent provided legal services to the Powells only on a "temporary basis" because it concludes that, even if Respondent's legal services were provided only on a temporary basis, they were performed under circumstances that create an unreasonable risk to the interests of Respondent's clients and, therefore, not authorized under rule 5.5 in general.

For example, there are few, if any, uniform state laws on creditor's rights, consumer debtors' rights, or what property is exempt from a sale under a writ of execution on a judgment. In fact, these and other laws relevant to Respondent's representation of the Powells vary greatly from state to state and from those of California. It is these differences in the laws of the 50 states that compel each state to have its own bar examination and admission requirements and procedures for the licensing of attorneys. Because Respondent readily admits that he has never had knowledge of the Oklahoma laws on creditor's rights, consumer debtors' rights, or what property is exempt from a sale under a writ of execution on a judgment in Oklahoma and how those laws have been construed and applied by Oklahoma courts, Respondent's representation of the Powells effectively deprived them, without their informed consent, of representation by an attorney who is knowledgeable of the relevant, if not controlling, Oklahoma laws. Accordingly, it is clear that Respondent's acceptance of employment with and representation of the Powells, even if only undertaken on a temporary basis, was not permitted by Oklahoma rule 5.5(c) in general.

Oklahoma Rule 5.5(d)(2)

In Oklahoma rule 5.5(d), Oklahoma expressly authorizes out-of-state attorneys to practice law within its borders on a permanent basis in two instances. Respondent contends that he was authorized to provide debt relief legal services to the Powells under one of those two instances. Specifically, respondent contends that his representation of the Powells was permissible under Oklahoma rule 5.5(d)(2),which permits an attorney licensed only in a sister state to permanently provide legal services in Oklahoma when the attorney is authorized to provide the services by federal law or other law of Oklahoma.

Specifically, Respondent contends that he was authorized to represent the Powells in a consumer debt-relief matter under federal law because he (1) reviewed the Powells' files to determine their potential eligibility for filing a bankruptcy petition under chapter 7 and because he demanded that the creditors stop contacting the Powells under the federal Fair Debt Collection Practices Act, both federal law matters. Respondent opines that he may lawfully practice federal law in a sister state even if he is not licensed to practice law in the sister state. Respondent cites no authority to support his position. And the court is unaware of any.

Without question, under the doctrine of federal preemption, the 50 states have no authority to restrict the right of federal courts and agencies to control who practices before them. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 73, and cases there cited.) But that fact does not, as Respondent contends, mean that an attorney may freely practice federal law in a state in which the attorney is not licensed. An attorney may freely practice federal law in a state in which the attorney is not licensed only if a federal court or agency authorizes the attorney to do so. It is only when a federal court or agency authorizes the attorney to practice before it that the state law prohibiting the practice is preempted. Thus, a sister state may freely preclude a California attorney from lawfully practicing bankruptcy law within its borders unless the attorney has been admitted to practice before the bankruptcy courts in the sister state.

Respondent does not contend that he was admitted to practice before the bankruptcy courts in either Florida, Georgia, New York, Nevada, Oklahoma, Pennsylvania, South Dakota, or Wisconsin. Had Respondent been admitted to practice before the bankruptcy courts in Oklahoma, he would have been authorized by federal law and Oklahoma rule 5.5(d)(2) to perform the bankruptcy review in the Powell client matter. (Cf. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 902-903.)

No federal law or agency licenses or authorizes the practice of law with respect to the federal Fair Debt Collection Practices Act. Accordingly, the federal-law-safe-harbor provision in Oklahoma rule 5.5(d)(2) does not apply to Respondent's practice of law under the Fair Debt Collection Practices Act. Further, Respondent fails to explain how the provisions of the Fair Debt Collection Practices Act do not implicate local state statutes. When the practice of federal law also involves the application of local state statutes as it does under the Fair Debt Collection Practices Act, the doctrine of federal preemption does not preclude a finding of culpability for UPL with respect to the application of the state statutes. (*In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 902-903.)

In sum, Respondent's acceptance of employment with and representation of the Powells was not authorized by federal law or Oklahoma rule 5.5(d)(2) or any other law of Oklahoma.

Count 1 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)

In count 1, the State Bar charges that Respondent willfully violated California rule 1-300(B) because he engaged in the unauthorized practice of law in Oklahoma in the Powell client matter. California rule 1-300(B) provides: "A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

The record clearly establishes that respondent engaged in the practice of law in Oklahoma in violation of Oklahoma rule 5.5(b)(1) because he established a systematic and continuous presence in Oklahoma for the practice of law during his representation of the Powells. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Oklahoma, a jurisdiction in which he is not licensed to practice, by accepting employment and representing the Powells in a consumer debt-relief matter.

2. Case Number 09-O-13870 – The Curry Client Matter

On December 20, 2009, Georgia resident Barbara Curry signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditors and to perform "debt consolidation" legal services in connection with her unsecured consumer debts. On December 30, 2008, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to three unsecured creditors of Curry.

As noted *ante*, Respondent has never been licensed to practice law in the State of Georgia. The State of Georgia prohibits the practice of law by anyone who is not admitted to the practice of law in Georgia except as otherwise provided by law or as authorized in Georgia Rules of Professional Conduct, rule 5.5 ("Georgia rule 5.5"). Georgia rule 5.5 is substantially identical to Oklahoma rule 5.5, which is quoted *ante*, and ABA Model Rule 5.5.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Georgia when he represented Curry, and Respondent's representation of Curry was not authorized by Georgia rule 5.5(c)(4), Georgia rule 5.5(c) in general, or Georgia rule 5.5(d)(2).

Count 2 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Georgia in violation of Georgia rule 5.5(b)(1) because he established a systematic and continuous presence in Georgia for the practice of law during his representation of Curry. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Georgia, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Curry in a consumer debt-relief matter.

3. Case Number 09-O-14231 – The Atha Client Matter
Case Number 10-O-00425 – The Jarrett Client Matter
Case Number 10-O-05950 – The Pequero Matter

On August 4, 2008, Florida resident Jere Jarrett signed Respondent form retainer agreement, retaining Respondent to negotiate with his unsecured creditors and to perform "debt consolidation" legal services in connection with his unsecured consumer debts. On September 8, 2008, Respondent or his law office sent a cease-and-desist letter on his law office stationary to one of Jarrett's unsecured creditors.

On December 23, 2008, Florida resident Moises Pequero signed Respondent form retainer agreement, retaining Respondent to negotiate with his unsecured creditors and to perform "debt consolidation" legal services in connection with his unsecured consumer debts. On January 13, 2009, Respondent or his law office sent cease-and-desist letters on his law-office stationary to three unsecured creditors of Pequero.

On February 4, 2009, Florida resident Sandra Atha signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditors and to perform "debt consolidation" legal services in connection with her unsecured consumer debts. On March 5, 2009, Respondent or his law office sent cease-and-desist letters on his law-office stationary to certain unsecured creditors of Atha.

As noted *ante*, Respondent has never been licensed to practice law in the State of Florida. The State of Florida prohibits the practice of law by anyone who is not admitted to the practice of law in Florida except as otherwise provided by other law or as authorized in Florida Rules of Professional Conduct, rule 4-5.5 ("Florida rule 4-5.5"). Florida rule 4-5.5 is similar, but not substantially identical to Oklahoma rule 5.5, which is quoted *ante*, or ABA Model Rule 5.5.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Florida when he represented Jarrett, Pequero, and Atha, and Respondent's representation of those three individuals was not authorized by Florida rule 4-5.5(c)(4)(B) or Florida rule 4-5.5(c) in general or any other Florida or federal law.

Count 3 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)
Count 7 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)
Count 2 in NDC #2 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Florida in violation of Florida rule 4-5.5(b)(1) because he established a "regular presence in Florida for the practice of law" during his representation of Jarrett, Pequero, and Atha.[7] Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Florida, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Jarrett, Pequero, and Atha in consumer debt-relief matters.

4. Case Number 09-O-16534 – The Fisher Client Matter

On January 19, 2009, Pennsylvania resident Robert Fisher signed Respondent's form retainer agreement, retaining Respondent to negotiate with his unsecured creditor and to perform "debt consolidation" legal services in connection with his unsecured consumer debt. On January

[7] Because the court finds that respondent engaged in the practice of law in Florida in violation of Florida rule 5.5(b)(1), the court need not, and does not, determine whether respondent's conduct also violated Florida Statutes Title XXII, Chapter 454.23 (criminalizing UPL in Florida).

28, 2009, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to three unsecured creditors of Fisher.

As noted *ante*, Respondent has never been licensed to practice law in the Commonwealth of Pennsylvania. The Commonwealth of Pennsylvania prohibits the practice of law by anyone who is not admitted to the practice of law in Pennsylvania except as otherwise provided by law or as authorized in Pennsylvania Rules of Professional Conduct, rule 5.5 ("Pennsylvania rule 5.5"). Pennsylvania rule 5.5 is substantially identical to Oklahoma rule 5.5, which is quoted *ante*, and ABA Model Rule 5.5.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Pennsylvania when he represented Fisher, and Respondent's representation of Fisher was not authorized by Pennsylvania rule 5.5(c)(4) or Pennsylvania rule 5.5(c) in general or by any other Pennsylvania or federal law.

Count 4 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Pennsylvania in violation of Pennsylvania rule 5.5(b)(1) because he established a systematic and continuous presence in Pennsylvania for the practice of law during his representation of Fisher. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Pennsylvania, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Fisher in a consumer debt-relief matter.

5. Case Number 09-O-16777 – The Burgess Client Matter

On December 12, 2008, Wisconsin resident Julia Burgess signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditor and to perform "debt consolidation" legal services in connection with her unsecured consumer debt. On

December 12, 2008, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to five unsecured creditors of Burgess.

As noted *ante*, Respondent has never been licensed to practice law in the State of Wisconsin. Wisconsin Supreme Court Rule 23.02 provides that "no person may engage in the practice of law in Wisconsin… unless the person is currently licensed to practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar of Wisconsin." Wisconsin has not adopted ABA Model Rule 5.5. Nor has Wisconsin adopted a rule similar to ABA Model Rule 5.5. Accordingly, there is no safe-harbor provision in Wisconsin under which Respondent might have represented Burgess without engaging in UPL.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Wisconsin when he represented Burgess, and Respondent's representation of Burgess was not authorized by Wisconsin or federal law.

Count 5 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Wisconsin in violation of Wisconsin Supreme Court Rule 23.02 when he represented Burgess. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Wisconsin, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Burgess in a consumer debt-relief matter.

6. Case Number 09-O-18627 – The Manfredi Client Matter

On September 11, 2008, New York resident Lorraine Manfredi signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditors and to perform "debt consolidation" legal services in connection with her unsecured consumer debts.

On November 4, 2008, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to three unsecured creditors of Manfredi.

As noted *ante*, Respondent has never been licensed to practice law in the State of New York. New York Judiciary Law section 478 makes it unlawful for a natural person to engage in the practice of law "without having first been duly and regularly licensed and admitted to practice law in the courts of record of [New York]." Moreover, New York has not adopted ABA Model Rule 5.5. Nor has New York adopted a rule similar to ABA Model Rule 5.5. Accordingly, there is no safe-harbor provision in New York under which Respondent might have represented Manfredi without engaging in UPL. Moreover, because engaging in UPL in New York is apparently a crime, the State Bar must prove Respondent's culpability in the Manfredi client matter beyond a reasonable doubt. (*In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at p. 911, fn. 25.)

For the same reasons set forth under the Powell client matter *ante*, the court finds, beyond a reasonable doubt, that Respondent practiced law in New York when he represented Manfredi, and Respondent's representation of Manfredi was not authorized by New York or federal law.

Count 6 in NDC #1 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The court finds, beyond a reasonable doubt that respondent engaged in the practice of law in Ney York in violation of New York Judiciary Law section 478 when he represented Manfredi. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in New York, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Manfredi in a consumer debt-relief matter.

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7. Case Number 10-O-02737 – The Quintana Client Matter
Case Number 10-O-10524 –The Padayao Client Matter

On June 29, 2009, Nevada resident Carlos Padayao signed Respondent's form retainer agreement, retaining Respondent to negotiate with his unsecured creditors and to perform "debt consolidation" legal services in connection with his unsecured consumer debts. On July 31, 2009, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to five of Padayao's unsecured creditors.

On July 25, 2009, Nevada resident Hector Quintana signed Respondent's form retainer agreement, retaining Respondent to negotiate with his unsecured creditors and to perform "debt consolidation" legal services in connection with his unsecured consumer debts. On August 4, 2009, Respondent authorized the mailing of cease-and-desist letters on his law-office stationary to eight unsecured creditors of Quintana.

As noted *ante*, Respondent has never been licensed to practice law in the State of Nevada. Nevada prohibits an attorney not licensed to practice law in Nevada from practicing law in Nevada, pursuant to Nevada Rules of Professional Conduct, Rule 5.5 ("Nevada rule 5.5"). Nevada rule 5.5 is similar, but not substantially identical to ABA Model Rule 5.5.

Nevada rule 5.5(d)(2)(i) provides that "A lawyer who is not admitted to practice in [Nevada] shall not: (i) Establish an office or other regular presence in [Nevada] for the practice of law." For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Nevada when he represented Padayao and Quintana. Moreover, respondent's representation of Padayao and Quintana was not authorized by Nevada rule 5.5(b) or any other Nevada or federal law.

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Count 1 in NDC #2 – California Rule 1-300(B) (UPL in Other Jurisdictions)
Count 4 in NDC #2 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Nevada in violation of Nevada rule 5.5(d)(2)(i) when he represented Padayao and Quintana. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Nevada, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Padayao and Quintana in consumer debt-relief matters.

8. Case Number 10-O-07962 – The Ledford Client Matter

On April 4, 2009, Kentucky resident Sharon Ledford signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditors and to perform "debt consolidation" legal services in connection with her unsecured consumer debts.

As noted *ante*, Respondent has never been licensed to practice law in the State of Kentucky. Kentucky prohibits the practice of law by anyone who is not admitted to the practice of law in Kentucky except as otherwise provided by law or as authorized in Kentucky Supreme Court rule 3.130 ("Kentucky rule 3.130"). Kentucky rule 3.130 is similar to Oklahoma rule 5.5, which is quoted *ante*, and ABA Model Rule 5.5.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in Kentucky when he represented Ledford, and Respondent's representation of Ledford was not authorized by Kentucky rule 3.130(c)(3), Kentucky rule 3.130(c) in general, or Kentucky rule 3.130(d)(2) or any other Kentucky or federal law.

Count 3 in NDC #2 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in Kentucky in violation of Kentucky rule 3.130(a)(1) because he established or maintained an other presence in Kentucky for the practice of law during his representation of Ledford. Accordingly, the court

finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in Kentucky, a jurisdiction in which he is not licensed to practice, by accepting employment and representing Ledford in a consumer debt-relief matter.

9. Case Number 10-O-11144 – The Liesinger-Nippert Client Matter

On November 23, 2008, South Dakota resident Lee Ann Liesinger-Nippert signed Respondent's form retainer agreement, retaining Respondent to negotiate with her unsecured creditors and to perform "debt consolidation" legal services in connection with her unsecured consumer debts.

As noted *ante*, Respondent has never been licensed to practice law in the State of South Dakota. The State of South Dakota prohibits the practice of law by anyone who is not admitted to the practice of law in South Dakota except as otherwise provided by law or as authorized in South Dakota Rules of Professional Conduct, rule 5.5 ("South Dakota rule 5.5"). Except with respect to one or two items not relevant here, South Dakota rule 5.5 is substantially identical to Oklahoma rule 5.5, which is quoted *ante*, and ABA Model Rule 5.5.

For the same reasons set forth under the Powell client matter *ante*, Respondent practiced law in South Dakota when he represented Liesinger-Nippert, and Respondent's representation of Liesinger-Nippert was not authorized by South Dakota rule 5.5(c)(4), South Dakota rule 5.5(c) in general, or South Dakota rule 5.5(d)(2).

Count 5 in NDC #2 – California Rule 1-300(B) (UPL in Other Jurisdictions)

The record clearly establishes that respondent engaged in the practice of law in South Dakota in violation of South Dakota rule 5.5(b)(1) because he established a systematic and continuous presence in South Dakota for the practice of law during his representation of Liesinger-Nippert. Accordingly, the court finds that there is clear and convincing evidence that, in willful violation of California rule 1-300(B), Respondent engaged in UPL in South Dakota, a

jurisdiction in which he is not licensed to practice, by accepting employment and representing Liesinger-Nippert in a consumer debt-relief matter.

Case Number 10-O-09953 – Client Trust Account Matter[8]

Count 8 in NDC #1 – California Rule 4-100(A) (Comingling Personal Funds in Client Trust Account])

In case number 10-O-09953, the State Bar charges that Respondent willfully violated rule 4-100(A), which provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions nor relevant here.

Specifically, the State Bar charges that Respondent improperly commingled his personal funds in his CTA in violation of rule 4-100(A) because, according to the State Bar: (1) on about October 8, 2010, Respondent deposited $654 of his own funds, or funds owed to Respondent and/or his law offices, into his CTA; (2) on about November 4, 2010, Respondent deposited $150 of his own funds into his CTA; and (3) on about November 10, 2010, Respondent deposited $300 of his own funds into his CTA.

The record, however, fails to establish, by clear and convincing evidence, Respondent deposited $654 of his own funds, or funds owed to Respondent or his law office, into his CTA on October 8, 2010. Moreover, the record establishes that a former client erroneously deposited $150 into Respondent's CTA on November 4, 2010, and that Respondent forwarded the funds to the former client's new counsel. Likewise, the record also establishes that a former client erroneously deposited $300 of his personal funds into Respondent's CTA on November 10, 2010, and that Respondent forwarded the funds to the former client's new counsel.

[8] Respondent's motion in limine to exclude bank records is denied, no good cause having been shown.

In short, count 8 in NDC #1 is DISMISSED WITH PREJUDICE for want of proof.

Aggravation

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has three prior records of discipline.

***Lenard* I**

Respondent's first prior record of discipline is the Supreme Court's March 19, 2003 order in *In re Richard Allen Lenard on Discipline*, case number S112319 (State Bar Court case number 97-O-16623, etc.) (*Lenard* I) in which the Supreme Court placed Respondent on two years' stayed suspension and three years' probation on conditions, including a one-year (actual) suspension continuing until Respondent paid restitution totaling $6,160 (plus interest) to two clients. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation that Respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on October 21, 2002. That stipulation establishes that Respondent was culpable of (1) failing to maintain client funds in a trust account (rule 4-100(A)) in five client matters, (2) failing to perform legal services competently by not adequately supervising his law office staff (rule 3-110(A)), and (3) engaging in acts involving moral turpitude (§ 6106) by not adequately supervising his staff and by not properly managing his client trust account.

The stipulation in *Lenard* I further establishes, in aggravation, that Respondent's misconduct involved trust account violations, caused significant client harm, and involved multiple acts of misconduct. The stipulation further establishes that Respondent undertook steps to prevent future misconduct.

***Lenard* II**

Respondent's second prior record of discipline is the Supreme Court's January 13, 2005 order in *In re Richard Allen Lenard on Discipline*, case number S128824 (State Bar Court case

numbers 02-O-13800; 03-O-01634 (consolidated)) (*Lenard* II) in which the Supreme Court placed Respondent on one year's stayed suspension and two years' probation on conditions, including a thirty-day (actual) suspension. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation that Respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on September 16, 2004. That stipulation establishes that Respondent willfully failed to remove the name of his disbarred law partner from his client trust account (§ 6132) and failed to promptly payout client funds (rule 4-100(B)(4)).

The stipulation in *Lenard* II further establishes, in aggravation, that Respondent had one prior record of discipline at the time. The stipulation also establishes that there were not mitigating circumstances.

***Lenard* III**

Respondent's third prior record of discipline is the Supreme Court's October 13, 2010 order in *In re Richard Allen Lenard on Discipline*, case number S185110 (State Bar Court case number 09-O-11271) (*Lenard* III) in which the Supreme Court placed Respondent on two years' stayed suspension and two years' probation on conditions, including a one-year (actual) suspension. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation that Respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on June 4, 2010. That stipulation establishes that Respondent willfully failed to comply with the conditions of probation imposed on him in *Lenard* II by failing to timely submit six of his quarterly probation reports to the Office of Probation and by failing to make restitution of more than $11,000 to the Client Security Fund (§ 6068, subd. (k)).

The stipulation in *Lenard* II further establishes, in aggravation, that Respondent had two prior records of discipline at the time. The stipulation also establishes, in mitigation, that Respondent cooperated with the State Bar.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent is culpable on 12 counts of willfully violating rule 1-300(B), which establishes multiple acts of misconduct and a pattern of misconduct.

Bad Faith & Other Ethical Violations (Std. 1.2(b)(iii).)

As noted in footnote 3, *ante*, the court considers Respondent's proved, but uncharged use of deceptive and misleading retainer agreements in each of the 12 client matters as bad-faith-dishonesty aggravation under standard 1.2(b)(iii).

In addition, as noted in footnote 5, *ante*, the court considers Respondent's proved, but uncharged violations of California rule 3-310(F)(3) in each of the 12 client matters as other-ethical-violations aggravation under standard 1.2(b)(iii).

As discussed on pages 8 and 9, *ante*, the court considers Respondent's proved, but uncharged violations of California rule 3-110(A) in each of the 12 client matters as other-ethical-violations aggravation under standard 1.2(b)(iii).

Mitigation

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent cooperated in the State Bar's investigation and the trial of this matter. He entered into an extensive stipulation to facts and admission of documents, which aided in the conservation of valuable court resources and for which Respondent is entitled to significant mitigation.

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Discussion

In determining the appropriate discipline to recommend in this matter, the court looks to the purposes of disciplinary proceedings and sanctions. Standard 1.3 provides that the primary purposes of disciplinary proceedings "are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

The State Bar urges that Respondent be disbarred from the practice of law. Respondent requests a thirteen month actual suspension.

The applicable standard for Respondent's willful violations of California rule 1-300(B) is standard 2.10, which provides as follows:

> Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Also, relevant is standard 1.7(b), which provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.

In the present case, the only mitigating circumstances is that Respondent cooperated in this disciplinary proceeding. Even though Respondent's cooperation entitles him to very significant mitigation, it is not compelling mitigation; nor does it clearly predominate. Nonetheless, despite standard 1.7(b)'s unequivocal language to the contrary, disbarment is still not mandatory under standard 1.7(b). (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) And that is because standard 1.7(b) is not applied in a method that blindly treats all prior records of discipline as equally aggravating. Instead, the standard is applied "with due regard to the nature and extent of the

Respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

Each one of Respondent's three prior records of discipline involved serious misconduct. Furthermore, each of Respondent's three prior records of discipline provided Respondent both with actual notice that his conduct fell below the minimum standards of the profession and with an opportunity to rehabilitate himself and to conform his conduct to the strictures of the profession. Respondent engaged in the present misconduct shortly after his disciplinary probation in *Lenard* III ended. Thus, the serious misconduct and aggravating circumstances in the present proceeding establish that Respondent is either unwilling or unable to conform his conduct to the strictures of the profession and that he is not an appropriate candidate for further disciplinary probation.

In short, the record establishes that it is appropriate to recommend that Respondent be disbarred in accordance with standard 1.7(b).

Recommendations

Discipline

The court recommends that Respondent RICHARD ALLEN LENARD, State Bar Number 153916, be disbarred from the practice of law in California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that RICHARD ALLEN LENARD be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that RICHARD ALLEN LENARD be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June 5, 2012.

RICHARD A. PLATEL
Judge of the State Bar Court